

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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| MICHAEL KRECHMER, a/k/a | : | |
| “Michael Malice,” an individual, | : | |
| | : | |
| Plaintiff, | : | Case No.: 16-cv-7820 (KBF) |
| | : | |
| -against- | : | |
| | : | <u>DECLARATION OF ATTORNEY</u> |
| | : | <u>JAY M. WOLMAN</u> |
| | : | |
| ANDREA K. TANTAROS, an individual; | : | |
| and ASTERO, LLC, a New Jersey limited | : | |
| liability company, | : | |
| | : | |
| Defendants. | : | |
| | : | |
| | X | |

I, JAY M. WOLMAN, declare:

1. I am over 18 years of age and have first-hand knowledge of the facts set forth herein, and if called as a witness could and would testify competently thereto.
2. I am an attorney licensed to practice in the State of New York and before the Bar of this Court.
3. I am attorney of record for Plaintiff Michael Krechmer a/k/a “Michael Malice” in this matter, and I submit this declaration in support of Plaintiff’s Presentation of Additional Evidence and Statement of Additional Material Facts in Opposition to Converted Motion for Summary Judgment (Plaintiff’s “Supplement”).
4. Attached to Mr. Malice’s Supplement as Exhibit 1 is a true and correct copy of the *New York Times*’ list of Best Selling humor books for July 2016, as found at the URL <<http://www.nytimes.com/books/best-sellers/2016/07/10/humor/>>.
5. Attached to Mr. Malice’s Supplement as Exhibit 2 is a true and correct copy of the cover of the book Hughes, M. & Malice, M., *Made in America: The Most Dominant Champion in UFC History* (Simon Spotlight Entertainment 2008), as found at the URL

<<http://i1.wp.com/michaelmalice.com/wp-content/uploads/2016/08/71IwY8ss1mL-e1474508385334.jpg?fit=800%2C1200>>.

6. Attached to Mr. Malice's Supplement as Exhibit 3 is a true and correct copy of the article: Brendan Gauthier, "Fox News host Andrea Tantaros quietly pulled from daytime show over contract 'issues'", *Salon* (April 29, 2016), as found at the URL <http://www.salon.com/2016/04/29/fox_news_host_andrea_tantaros_quietly_pulled_from_daytime_show_over_contract_issues/>.

7. Attached to Mr. Malice's Supplement as Exhibit 4 is a true and correct copy of an email from Andrea Tantaros ("Tantaros") dated March 26, 2015 at 6:35 p.m., as provided by Mr. Malice ("Malice").

8. Attached to Mr. Malice's Supplement as Exhibit 5 is a true and correct copy of an email from Tantaros dated March 29, 2015 at 9:05 p.m., as provided by Mr. Malice.

9. Attached to Mr. Malice's Supplement as Exhibit 6 is a true and correct copy of an email from Tantaros dated April 13, 2015 at 4:13 p.m., as provided by Mr. Malice.

10. Attached to Mr. Malice's Supplement as Exhibit 7 is a true and correct copy of an email from Tantaros dated April 15, 2015 at 2:34 p.m., as provided by Mr. Malice.

11. Attached to Mr. Malice's Supplement as Exhibit 8 is a true and correct copy of an email from Tantaros dated April 15, 2015 at 5:40 p.m., as provided by Mr. Malice.

12. Attached to Mr. Malice's Supplement as Exhibit 9 is a true and correct copy of the check number 2056798, paying Mr. Malice under the Collaboration Agreement, via his agent, The Gersh Agency, as provided by Mr. Malice.

13. Attached to Mr. Malice's Supplement as Exhibit 9.5 is a true and correct copy of an email from Malice dated May 4, 2015 at 9:51 p.m., as provided by Mr. Malice.

14. Attached to Mr. Malice's Supplement as Exhibit 10 is a true and correct copy of the check number 2057840, paying Mr. Malice under the Collaboration Agreement, via his agent, The Gersh Agency, as provided by Mr. Malice.

15. Attached to Mr. Malice's Supplement as Exhibit 11 is a true and correct copy of an email from Tantaros dated June 18, 2015 at 4:57 p.m., as provided by Mr. Malice.

16. Attached to Mr. Malice's Supplement as Exhibit 12 is a true and correct copy of a log of text messages between Plaintiff Malice and Defendant Tantaros, as provided by Mr. Malice.

17. Attached to Mr. Malice's Supplement as Exhibit 13 is a true and correct copy of an email from Tantaros dated July 16, 2015 at 8:57 a.m., as provided by Mr. Malice.

18. Attached to Mr. Malice's Supplement as Exhibit 14 is a true and correct copy of email from Malice dated July 16, 2015 at 4:24 p.m., as provided by Mr. Malice.

19. Attached to Mr. Malice's Supplement as Exhibit 15 are true and correct copies of an email from Tantaros dated July 21, 2015 at 11:10 a.m. and an email from Tantaros dated July 28, 2015 at 1:51 p.m., as provided by Mr. Malice.

20. Attached to Mr. Malice's Supplement as Exhibit 16 is a true and correct copy of an email from Tantaros dated July 28, 2015 at 5:36:04 p.m., as provided by Mr. Malice.

21. Attached to Mr. Malice's Supplement as Exhibit 17 is a true and correct copy of email from Tantaros dated July 28, 2015 at 5:36:52 p.m., as provided by Mr. Malice.

22. Attached to Mr. Malice's Supplement as Exhibit 18 is a true and correct copy of check number 989 from Tantaros, paying Malice under the Ghostwriting Agreement, as provided by Mr. Malice.

23. Attached to Mr. Malice's Supplement as Exhibit 19 is a true and correct copy of the Collaboration Agreement executed between the parties, as provided by Mr. Malice.

24. Attached to Mr. Malice's Supplement as Exhibit 20 is a true and correct copy of an email from Tantaros dated August 3, 2015 at 9:25 a.m., as provided by Mr. Malice.

25. Attached to Mr. Malice's Supplement as Exhibit 21 is a true and correct copy of an email from Tantaros dated August 5, 2015 at 5:44 p.m., as provided by Mr. Malice.

26. Attached to Mr. Malice's Supplement as Exhibit 22 is a true and correct copy of an email from Malice dated August 10, 2015 at 5:00 p.m., as provided by Mr. Malice.

27. Attached to Mr. Malice's Supplement as Exhibit 23 is a true and correct copy of an email from Malice dated August 31, 2015 at 8:50 p.m., as provided by Mr. Malice.

28. Attached to Mr. Malice's Supplement as Exhibit 24 is a true and correct copy of an email from Tantaros dated September 18, 2015 at 1:31 p.m., as provided by Mr. Malice.

29. Attached to Mr. Malice's Supplement as Exhibit 25 is a true and correct copy of an email from Tantaros dated October 30, 2015 at 2:18 p.m., as provided by Mr. Malice.

30. Attached to Mr. Malice's Supplement as Exhibit 26 is a true and correct copy of an email from Tantaros dated September 18, 2015 at 2:50 p.m., as provided by Mr. Malice.

31. Attached to Mr. Malice's Supplement as Exhibit 27 is a true and correct copy of an email from Tantaros dated September 27, 2015 at 9:02 p.m., as provided by Mr. Malice.

32. Attached to Mr. Malice's Supplement as Exhibit 28 is a true and correct copy of an email from Malice dated October 4, 2015 at 10:30 p.m., as provided by Mr. Malice.

33. Attached to Mr. Malice's Supplement as Exhibit 29 is a true and correct copy of an email from Tantaros dated October 4, 2015 at 10:47 p.m., as provided by Mr. Malice.

34. Attached to Mr. Malice's Supplement as Exhibit 30 is a true and correct copy of an email from Tantaros dated January 11, 2016 at 1:17 p.m., as provided by Mr. Malice.

35. Attached to Mr. Malice's Supplement as Exhibit 31 is a true and correct copy of an email from Malice dated January 11, 2016 at 11:22 p.m., as provided by Mr. Malice.

36. Attached to Mr. Malice's Supplement as Exhibit 32 is a true and correct copy of an email from Tantaros dated January 12, 2016 at 10:57 a.m., as provided by Mr. Malice.

37. Attached to Mr. Malice's Supplement as Exhibit 33 is a true and correct copy of relevant excerpts of the transcript of WhatsApp messages between Plaintiff Malice and Defendant Tantaros, provided by Mr. Malice.

38. Attached to Mr. Malice's Supplement as Exhibit 34 is a true and correct copy of an email from Tantaros dated January 20, 2016 at 10:34 a.m., as provided by Mr. Malice.

39. Attached to Mr. Malice's Supplement as Exhibit 35 is a true and correct copy of an email from Tantaros dated February 5, 2016 at 8:09 a.m., as provided by Mr. Malice.

40. Attached to Mr. Malice's Supplement as Exhibit 36 is a true and correct copy of the acknowledgments page of *Tied Up In Knots*.

41. Attached to Mr. Malice's Supplement as Exhibit 37 is a true and correct copy of an email from Tantaros dated February 21, 2016 at 4:02 p.m., as provided by Mr. Malice.

42. Attached to Mr. Malice's Supplement as Exhibit 38 is a true and correct copy of an email from HarperCollins dated February 22, 2016 at 10:28 a.m., as provided by Mr. Malice.

43. Attached to Mr. Malice's Supplement as Exhibit 39 is a true and correct copy of an email from Malice dated March 2, 2016 at 10:18 p.m., as provided by Mr. Malice.

44. Attached to Mr. Malice's Supplement as Exhibit 40 is a true and correct copy of an email from Eric Meyers dated March 8, 2016 at 10:46 a.m., as provided by Mr. Malice.

45. Attached to Mr. Malice's Supplement as Exhibit 41 is a true and correct copy of an email from Tantaros dated March 17, 2016 at 8:09 p.m., as provided by Mr. Malice.

46. Attached to Mr. Malice's Supplement as Exhibit 42 is a true and correct copy of an email from Tantaros dated March 18, 2016 at 8:39 p.m., as provided by Mr. Malice.

47. Attached to Mr. Malice's Supplement as Exhibit 43 is a true and correct copy of the attachment to an email from Tantaros dated March 17, 2016 at 8:09 p.m., as provided by Mr. Malice.

48. Attached to Mr. Malice's Supplement as Exhibit 44 is a true and correct copy of an email from Tantaros dated March 21, 2016 at 9:06 a.m., as provided by Mr. Malice.

49. Attached to Mr. Malice's Supplement as Exhibit 45 is a true and correct copy of the letter from Attorney Cane to Malice dated March 28, 2016, as provided by Mr. Malice.

50. Attached to Mr. Malice's Supplement as Exhibit 46 is a true and correct copy of an email from Tantaros dated April 5, 2016 at 9:52 p.m., as provided by Mr. Malice.

51. Attached to Mr. Malice's Supplement as Exhibit 47 is a true and correct copy of Attorney Heraty's letter to Attorney Cane dated March 29, 2016, as provided by Mr. Malice.

52. Attached to Mr. Malice's Supplement as Exhibit 48 is a true and correct copy of the Amazon.com page for *Tied Up in Knots*, as found at the URL <<https://www.amazon.com/Tied-Up-Knots-Getting-Miserable/dp/0062351869>>.

53. Attached to Mr. Malice's Supplement as Exhibit 49 is a true and correct copy of the title page for *Tied Up in Knots*.

54. Attached to Mr. Malice's Supplement as Exhibit 50 is a true and correct copy of the copyright information page for *Tied Up in Knots*.

55. Attached to Mr. Malice's Supplement as Exhibit 51 is a true and correct copy of the article Chris Ariens, "Andrea Tantaros Won't Be on Fox News, for Now," TV Newser (Apr. 27, 2016), as found at the URL <<http://www.adweek.com/tvnewser/why-andrea-tantaros-wont-be-on-fox-news-for-the-time-being/292034>>.

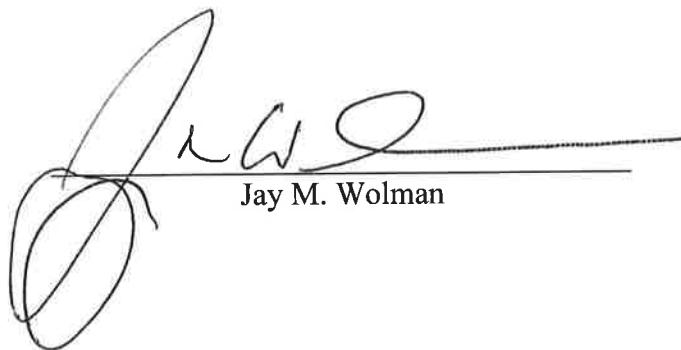
56. Attached to Mr. Malice's Supplement as Exhibit 52 is a true and correct copy of Fox News Network's Memorandum, filed August 29, 2016, in the matter of *Tantaros v. Fox News Network, LLC, et al.*, Index No. 157054/2016 (Supreme Ct. of N.Y., N.Y. County).

57. Attached to Mr. Malice's Supplement as Exhibit 53 is a true and correct copy of HarperCollins Publishers' *New York Times* Bestsellers, as found at the URL <<https://www.harpercollins.com/search-results/?collection=bestsellers>>.

58. Attached to Mr. Malice's Supplement as Exhibit 54 is a true and correct copy of Attorney Randazza's letter to Attorney Cane dated May 27, 2016.

I declare under penalty of perjury that the foregoing is true and correct.

Dated November 4, 2016.



Jay M. Wolman